

Summary of U.S.-Chile FTA Financial Services Chapter

Scope: The Financial Services Chapter applies to measures relating to financial institutions of the other Party, foreign investors and investments of the other Party in financial institutions as well as cross-border trade in financial services. A financial institution means any financial intermediary or other enterprise (including a branch) that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located. The chapter defines a financial service as any service of a financial nature and includes an illustrative but non-exhaustive list of financial services such as insurance, banking, securities, asset management, financial information and data processing services, advisory services and other financial services. (Under the structure of the FTA, the separate Investment Chapter will cover any investor or investment in a financial service not supplied by a regulated financial institution.)

Certain provisions from the Investment Chapter, such as those relating to transfers and expropriation, are incorporated by reference into the financial services provisions.

The U.S. pursued a comprehensive negative list approach to the investment obligations.

National Treatment: National treatment is extended to financial institutions of the other Party, investors and investments of the other Party in financial institutions and cross-border financial service suppliers. For investment, the national treatment obligation tracks the analogous obligation in the Investment Chapter and applies, in like circumstances, for the entire life cycle of the investment in a financial institution. For cross-border supply (with a cross-reference to a separate provision on cross-border supply), a Party is required to accord cross-border financial service suppliers of the other Party treatment no less favorable than it accords to its own financial service suppliers in like circumstances.

MFN: MFN also applies to financial institutions of the other Party, investors and investments of the other Party in financial institutions and cross-border financial service suppliers. A Party is required to accord each of these cases treatment no less favorable than it accords a non-Party, in like circumstances. As in NAFTA, the provision contains a rule enabling a Party to recognize prudential measures of a non-Party in the application of the financial services chapter. Such recognition may be accorded unilaterally, achieved through harmonization, or based on an agreement or arrangement with a non-Party. A Party according such recognition shall provide opportunities for the other Party to demonstrate that certain regulatory circumstances exist and if that is the case, the Party shall provide adequate opportunity for the other Party to negotiate similar recognition.

Market Access: The Financial Services Chapter includes an article to ensure that measures, such as non-discriminatory quantitative restrictions and restrictions on juridical form, do not undermine market access. These concepts are contained in GATS Article XVI. The FTA article, however, applies only to investment (and not cross-border trade) and does not include a prohibition against limiting foreign shareholding since this obligation is already covered by the national treatment obligation. The Article fully applies for insurance. For banking and securities, we used an alternative approach that combined obligations for right of establishment and juridical form in order to achieve more extensive sectoral coverage.

Cross-Border Trade: The article requires a Party to permit persons located in its territory, and nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of that other Party. The cross-border article extends national treatment to supply financial services cross-border (for example, through electronic means or supply by nationals in the territory of the other Party) for those financial services set out in a related Annex. In light of the sensitivity of cross-border supply for the banking and securities sectors, there are more limited commitments in this area for these subsectors. The cross-border insurance commitments are as extensive as possible while taking into account regulatory sensitivities as appropriate for particular means of supply, for example, for electronic supply.

Transparency and Administration of Approval Procedures: Because of the importance of regulatory transparency to the highly regulated financial services sector, the Parties recognize the importance of transparent regulations and policies and reasonable, objective and impartial administration governing financial activities. The Financial Services Chapter contains additional rules for financial services to ensure that market access can be realized. These provisions build on the FTA's general provisions on transparency. The chapter includes a requirement that Parties provide opportunities for advance notice and comment on new or amended regulations, to the extent practicable. It acknowledges that Parties should address substantive comments in writing and should allow reasonable time between publication of final regulations and their effective date, to the extent practicable.

The transparency provisions require authorities to make available their requirements for completing applications, and on request, to inform the applicant of the status of its application. It also provides for an administrative decision on a completed application within 120 days, or where it is not practicable within this timeframe, notification to the applicant without undue delay.

Non-Conforming Measures: The chapter includes flexibility for the Parties to record limited measures that do not conform with the financial services obligations of national

treatment, most-favored-nation treatment, cross-border trade, market access and senior management and board of directors. To maintain any non-conforming measure at the central and regional levels, a Party needs to list them in an annex. Subsequent liberalization of measures related to certain of these obligations establishes a commitment at that new level of openness.

Exceptions: To ensure adequate regulatory flexibility, the Financial Services Chapter contains an exception for prudential measures based on the GATS. It also includes an exception for certain measures in pursuit of monetary and related credit or exchange rate policies. This second exception does not affect a Party's commitments on transfers and performance requirements under the Investment Chapter.

Disclosure of Information: The chapter lists the types of information that need not be disclosed.

Financial Services Committee, Consultations & Dispute Settlement: The Financial Services Chapter provides for a Financial Services Committee and special procedures for use of financial experts to resolve disputes involving the financial sector. It also provides for investor-state arbitration for certain provisions such as expropriation and free transfers. Where these cases involve prudential measures, the Parties may elect to use state-to-state dispute settlement first.

Senior Management and Boards of Directors: A rule is established that neither Party may require financial institutions of the other Party to meet national requirements for nationality requirements for senior managerial or other essential personnel. A Party also may not impose certain nationality and residency requirements for the board of directors of the other Party's financial institutions.

New Financial Services: A special rule for new financial services strengthens and broadens financial markets by providing rights to financial institutions of the other Party to introduce new financial services when certain conditions are met. (For example, a certain insurance product may be available in the U.S. but may not yet have been introduced in an FTA partner country.) However, the Chapter also makes clear that a financial institution also could apply to be considered for authorization to supply a financial service that is supplied in the territory of neither Party.

Self-Regulatory Organizations: In cases where financial institutions of the other Party or cross-border suppliers are required to be members of a self-regulatory organization, each Party ensures that these service suppliers do not face discriminatory treatment by such self-regulatory organizations.

Payment and Clearing Systems: Each Party agrees to grant on a national treatment basis financial institutions of the other Party (and thus established in their territory) access to payment and clearing systems operated by public entities.

Expedited Availability of Insurance Services: A provision and related specific commitments highlight the importance of enabling licensed insurance suppliers to make insurance services available on an expedited basis, including examination of product approval practices.

Specific Commitments: Each Party agrees to allow certain asset managers established in their territory to obtain investment advice and portfolio management services, with limited exceptions, from financial institutions outside their respective territories.

Chile agrees, after March 1, 2005, to extend national treatment and most favored nation treatment to financial institutions of the United States with respect to its voluntary savings plans. Investment by a U.S. investor in Administradoras de Fondos de Pensiones is not subject to an economic needs test. As required by its domestic law, Chile will not establish arbitrary differences with respect to U.S. investors in Administradoras de Fondos de Pensiones.

For insurance, Chile agreed to provide branching rights within four years of entry into force of the FTA. Chile notes that it may apply certain regulatory requirements to such branches.